

c. *SCF/FSS, optional*, permitted for FSS and non-FSS bundles processed within the service area of the SCF. Pallet may contain bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces in FSS and non-FSS bundles prepared under 8.0. Labeling:

1. *Line 1*: “MXD” followed by city, state, and ZIP Code information for SCF serving the FSS 5-digit scheme ZIP Code as shown in L005, column B.

2. *Line 2*: “STD” followed by “FLTS;” followed by “SCF”; followed by “BARCODED” (or “BC”); followed by “FSS/NONFSS.”

**14.4 Bound Printed Matter**

**14.4.1 Basic Standards**

Presorted and carrier route Bound Printed Matter flats bearing an accurate barcode meeting the eligibility standards in 363.6.0 may be combined in bundles and placed on pallets for delivery to ZIP Codes having Flat Sequencing System (FSS) processing capability, as shown in L006. Bound Printed Matter flats are subject to the following:

a. Price eligibility for pricing purposes is based on standards in 363.0.

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for 5-digit (scheme) or carrier route prices in accordance with 363.0.

c. Mailers may combine all 5-digit, carrier route and 5-digit scheme eligible flat-size mailpieces into a combined mailpiece pool for each FSS 5-digit scheme combination according to L006.

d. Each bundle must be identified with a “SCH 5-DIGIT FSS” optional endorsement line in accordance with Exhibit 708.7.1.1, *OEL Formats*.

e. All pooled mailpieces prepared to a single palletized presort destination must be prepared in uniform size bundles, between 3 inches and 6.5 inches in height and secured in accordance with 365.2.5, except that one overflow bundle per mailpiece pool may be under the minimum size.

**14.4.2 Pallet Preparation and Labeling**

Preparation sequence and labeling:

a. *FSS sort plan, required*, permitted only for FSS bundles prepared for a single FSS sort plan as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a single FSS sort plan. Labeling:

1. *Line 1*: L006, (sort plan name) column B.

2. *Line 2*: “PSVC FLTS;” followed by “5D”; followed by “BARCODED” (or “BC”); followed by “FSS SCHEME” (or “FSS SCH”).

b. *FSS facility sort, required*, permitted only for FSS bundles prepared for the FSS sort plans processed within the same SCF as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a facility’s FSS sort plans. Labeling:

1. *Line 1*: “MXD” followed by information in L006, column C.

2. *Line 2*: “PSVC FLTS;” followed by “5D”; followed by “BARCODED” (or “BC”); followed by “FSS SCHEME” (or “FSS SCH”).

c. *SCF/FSS, optional*, permitted for FSS and non-FSS bundles processed within the service area of the SCF. Pallet may contain bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces in FSS and non-FSS bundles prepared under 8.0. Labeling:

1. *Line 1*: “MXD” followed by city, state, and ZIP Code information for SCF serving the FSS 5-digit scheme ZIP Code as shown in L005, column B.

2. *Line 2*: “PSVC FLTS;” followed by “FLTS;” followed by “SCF”; followed by “BARCODED” (or “BC”); followed by “FSS/NONFSS.”

\* \* \* \* \*

**707 Periodicals**

\* \* \* \* \*

**13.0 Carrier Route Eligibility**

\* \* \* \* \*

**13.2 Sorting**

**13.2.1 Basic Standards**

Preparation to qualify eligible pieces for carrier route prices is optional and need not be performed for all carrier routes in a 5-digit area. Carrier route prices apply to copies that are prepared in carrier route bundles of six or more addressed pieces each, subject to these standards:

\* \* \* \* \*

*[Revise item b of 13.2.1 to add reference to optional bundling standards by adding a new item b4 as follows:]*

4. Bundles prepared on pallets under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones*.

\* \* \* \* \*

**14.0 Barcoded (Automation) Eligibility**

**14.1 Basic Standards**

**14.1.1 General**

All pieces in a Periodicals barcoded (automation) mailing must:

\* \* \* \* \*

*[Revise item d of 14.1 to add reference to optional bundling standards as follows:]*

d. Be marked, sorted, and documented as specified in 705.8.0 (if palletized); or 24.0 (for letters) or 25.0 (for flats) or; for nonletter-size mail, 705.9.0, 705.10.0, 705.12.0, or 705.13.0; or for nonletter-size mail, bundles prepared on pallets under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones*.

\* \* \* \* \*

**708 Technical Specifications**

\* \* \* \* \*

**7.0 Optional Endorsement Lines (OELs)**

**7.1 OEL Use**

**7.1.1 Basic Standards**

\* \* \* \* \*

**Exhibit 7.1.1 OEL Formats**

**Sortation Level OEL Example**

\* \* \* \* \*

*[Revise Exhibit 7.1.1 to add a new item 13 (after item 12, “5-Digit Scheme (automation compatible flats”) to describe additional OEL human-readable text for use with FSS preparation mailpieces as follows:]*

5-Digit Scheme \* \* \* \* \*  
 \* \* \* \* \* SCH 5-DIGIT 12345 FSS  
 (Optional FSS-compatible flats preparation)

\* \* \* \* \*

We will publish an amendment to 39 CFR 111 to reflect these changes.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2010–20055 Filed 8–20–10; 8:45 am]

**BILLING CODE 7710–12–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[EPA–R06–RCRA–2009–0549; SW–FRL–9191–8]**

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is granting a petition submitted by Tokusen USA, Inc. (called Tokusen hereinafter) to exclude (or delist) a wastewater treatment plant (WWTP) sludge filter cake (called sludge hereinafter) generated by Tokusen in Conway, AR from the list of hazardous wastes. The final rule

responds to the petition submitted by Tokusen, to delist the WWTP sludge.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petition waste is not hazardous waste. This exclusion applies to 2,000 cubic yards per year of the WWTP sludge with Hazardous Waste Number: F006. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D landfill.

**DATES:** *Effective Date:* August 23, 2010.

**ADDRESSES:** The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act Review room on the 7th floor from 8 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is EPA-R06-RCRA-2009-0549. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning Permitting Division (6PD-C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Youngmoo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD-C), Dallas, Texas 75202, at (214) 665-6788, or [kim.youngmoo@epa.gov](mailto:kim.youngmoo@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

I. Overview Information

- A. What action is EPA finalizing?
- B. Why is EPA approving action?
- C. What are the limits of this exclusion?
- D. How will Tokusen manage the waste, if it is delisted?
- E. When is the final delisting exclusion effective?
- F. How would this action affect states?

II. Background

- A. What is a delisting petition?
- B. What regulations allow facilities to delist a waste?
- C. What does it require of a petitioner?
- D. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data

- A. What waste did Tokusen petition EPA to delist?
  - B. Who is Tokusen and what process does it use to generate the petitioned waste?
  - C. How did Tokusen sample and analyze the data in this petition?
  - D. What were the results of Tokusen's analyses?
  - E. How did EPA evaluate the risk of delisting this waste?
  - F. What did EPA conclude about Tokusen's analysis?
  - G. What other factors did EPA consider in its evaluation?
  - H. What is EPA's evaluation of this delisting petition?
- IV. Public Comments Received on the proposed exclusion
- A. What submitted comments on proposed rule?
- V. Statutory and Executive Order Reviews

**I. Overview Information**

*A. What action is EPA finalizing?*

After evaluating the petition, on March 31, 2010, EPA proposed to exclude the WWTP sludge from the list of hazardous wastes under 40 CFR 261.31 and 261.32 (*see* 70 FR 41358). EPA is finalizing the decision to grant Tokusen's delisting petition to have its WWTP sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

*B. Why is EPA approving this action?*

Tokusen's petition requests an exclusion from the F006 hazardous waste listing pursuant to 40 CFR 260.20 and 260.22. Tokusen does not believe that the petitioned waste meets the criteria for which EPA listed it. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to

believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist the waste from Tokusen is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the facility in Conway, Arkansas.

*C. What are the limits of this exclusion?*

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

*D. How will Tokusen manage the waste, if it is delisted?*

If the sludge is delisted, the WWTP sludge from Tokusen will be disposed at a RCRA Subtitle D landfill: The Waste Management Industrial Landfill, North Little Rock, Arkansas.

*E. When is the final delisting exclusion effective?*

This rule is effective August 23, 2010. The Hazardous and Solid Waste Amendments of 1985 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than a six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

*F. How would this action affect states?*

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929.

These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA programs)) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Tokusen transports the petitioned waste to or manages the waste in any state with delisting authorization, Tokusen must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

## II. Background

### A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

### B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

### C. What does it require of a petitioner?

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient

information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

### D. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

## III. EPA's Evaluation of the Waste Information and Data

### A. What waste did Tokusen petition EPA to delist?

On March 25, 2009, Tokusen petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F006) generated from its facility located in Conway, Arkansas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Tokusen requested that EPA grant a standard exclusion for 2,000 cubic yards per year of the WWTP sludge.

### B. Who is Tokusen and what process does it use to generate the petitioned waste?

The Tokusen USA, Inc. facility produces high-carbon steel tire cord for use in radial tire manufacturing. The steel cord is produced from steel rod which has been reduced in size and electroplated with copper and zinc to produce a brass coating. The facility generates F006 filter cake by the dewatering of wastewater sludge generated at the on-site wastewater treatment plants. This waste is stored on-site less than 90 days and is then transported from the site to the RCRA

Subtitle C facility, Chemical Waste Management in Sulphur, LA 70556.

### C. How did Tokusen sample and analyze the data in this petition?

To support its petition, Tokusen submitted:

- (1) Historical information on waste generation and management practices;
- (2) Analytical results from four samples for total concentrations of compounds of concern (COCs);
- (3) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values of COCs; and
- (4) Multiple pH testing for the petitioned waste.

### D. What were the results of Tokusen's analyses?

EPA believes that the descriptions of the Tokusen analytical characterization provide a reasonable basis to grant Tokusen's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the WWTP sludge samples included in the March 2009 petition were used in the DRAS to develop delisting levels.

EPA has reviewed the sampling procedures used by Tokusen and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in Tokusen's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

### E. How did EPA evaluate the risk of delisting this waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for Tokusen's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000), and 73 FR 28768 (May 19, 2008) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Tokusen's petitioned waste on human health and

the environment. A copy of this software can be found on the World Wide Web at <http://www.epa.gov/reg5rcra/wptdiv/hazardous/delisting/dras-software.html>. In assessing potential risks to groundwater, EPA used the maximum waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of  $10^{-5}$  and non-cancer hazard index of 1.0). The DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization from the landfill). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous

waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit on which the fate and transport model evaluates.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS and TCLP Analyses results found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Tokusen waste.

#### *F. What did EPA conclude about Tokusen's analysis?*

EPA concluded, after reviewing Tokusen's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by Tokusen, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 and 261.23, respectively.

#### *G. What other factors did EPA consider in its evaluation?*

During the evaluation of Tokusen's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tokusen's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tokusen's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tokusen's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tokusen's WWTP waste.

#### *H. What is EPA's evaluation of this delisting petition?*

The descriptions of Tokusen's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations. EPA believes that Tokusen's waste, F006 from copper and zinc electroplating process to produce a brass coating will not impose any threat to human health and the environment.

Thus, EPA believes Tokusen should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show Tokusen's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in Tokusen's waste are presently below the compliance-point concentrations used in the delisting decision and would not pose a substantial hazard to human health and the environment. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to Tokusen in Conway, Arkansas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the WWTP sludge.

EPA will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

The appropriate waste code for this waste is F006. The LDR treatment standard for F006 is found in 40 CFR 268.40.

## **IV. Public Comments Received on the Proposed Exclusion**

### *A. Who submitted comments on the proposed rule?*

No comments were received on the Proposed Rule during the comment period.

## **V. Statutory and Executive Order Reviews**

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have a reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA does not believe that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

**Lists of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 11, 2010.

**Bill Luthans,**

*Acting Director, Multimedia Planning and Permitting Division, Region 6.*

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.**

\* \* \* \* \*

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility                    | Address               | Waste description  |
|-----------------------------|-----------------------|--|
| *<br>Tokusen, USA Inc ..... | *<br>Conway, AR ..... | *<br>Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 2,000 cubic yards per calendar year after August 23, 2010 will be disposed in Subtitle D landfill.<br>For the exclusion to be valid, Tokusen must implement a verification testing program that meets the following paragraphs:<br>(1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP).<br>(A) Inorganic Constituents; Antimony-0.4; Arsenic-1.59; Barium-100; Chromium-5.0; Cobalt-0.8; Copper-91.3; Lead-2.32; Nickel-50.5; Selenium-1.0; Zinc-748.<br>(B) Organic Constituents: Acetone-1950.<br>(2) <i>Waste Management:</i> |

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description  |
|----------|---------|--|
|          |         | <p>(A) Tokusen must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied and approval is received by EPA.</p> <p>(B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. Tokusen can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations.</p> <p>(C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1), Tokusen can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level.</p> <p>If this sample confirms the exceedance, Tokusen must, from that point forward, treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). Tokusen must manage and dispose of the waste generated under Subtitle C of RCRA when it becomes aware of any exceedance.</p> <p>(D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Tokusen may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent verification testing indicates an exceedance of the Delisting Levels in paragraph (1), Tokusen must manage the WWTP sludge as a hazardous waste after it has received approval from EPA as described in paragraph (2)(C).</p> <p>(3) <i>Verification Testing Requirements:</i><br/>Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 8260B, 1311/8260B, 8270C, 6010B, 7470, 9034A, ASTM-4982B, ASTM-5049, E413.2. Methods must meet Performance Based Measurement System Criteria in which The Data Quality Objectives are to demonstrate that representative samples of sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). Tokusen must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, Tokusen must do the following:</p> <ul style="list-style-type: none"> <li>(i) The first sampling event for eight (8) samples will be performed within thirty (30) days of operation after this exclusion becomes final.</li> <li>(ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1).</li> <li>(iii) Within sixty (60) days after this exclusion becomes final, Tokusen will report initial verification analytical test data for the WWTP sludge, including analytical quality control information.</li> </ul> <p>Tokusen must request in writing that EPA allows Tokusen to substitute the Testing conditions in (3)(B) for (3)(A).</p> <p>(B) <i>Subsequent Verification Testing:</i><br/>Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. If levels of constituents measured in the samples of the WWTP sludge do not exceed the levels set forth in paragraph (1) in two consecutive quarters, Tokusen can manage and dispose of the WWTP sludge according to all applicable solid waste regulations.</p> <p>After the first year of sampling events, one (1) verification sampling test can be performed on two (2) annual samples of the waste treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1).</p> <p>(C) <i>Termination of Testing:</i></p> <ul style="list-style-type: none"> <li>(i) After the first year of quarterly testings, if the Delisting Levels in paragraph (1) are met, Tokusen may then request that EPA does not require a quarterly testing.</li> <li>(ii) Following termination of the quarterly testing, Tokusen must conduct one (1) sampling event on two (2) representative samples for all constituents listed in paragraph (1) annually.</li> </ul> <p>(4) <i>Changes in Operating Conditions:</i></p> |

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description   |
|----------|---------|---|
|          |         | <p>If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.</p> <p>(5) <i>Data Submittals:</i><br/> Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in paragraph (6). Tokusen must:</p> <p>(A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified.</p> <p>(B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.</p> <p>(C) Furnish these records and data when EPA or the state of Arkansas requests them for inspection.</p> <p>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:<br/> Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I can not personally verify its (their) truth and accuracy I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p> <p>(6) <i>Re-Opener:</i></p> <p>(A) If, any time after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Tokusen must report the data in writing to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if) no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(7) <i>Notification Requirements:</i></p> |

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility  | Address   | Waste description   |
|---|---|---|
| <p>* * * * *</p> <p>[FR Doc. 2010–20847 Filed 8–20–10; 8:45 am]</p> <p>BILLING CODE 6560–50–P</p>   | <p>floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2009–0108. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.</p>   | <p>Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>  |
| <p><b>ENVIRONMENTAL PROTECTION AGENCY</b></p>   | <p><b>FOR FURTHER INFORMATION CONTACT:</b> Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–F), Dallas, Texas 75202, at (214) 665–7395, or <a href="mailto:jacques.wendy@epa.gov">jacques.wendy@epa.gov</a>.</p> | <p><b>I. Overview Information</b></p>   |
| <p><b>40 CFR Part 261</b></p>   | <p><b>SUPPLEMENTARY INFORMATION:</b> The information in this section is organized as follows:</p>   | <p><i>A. What action is EPA finalizing?</i></p>   |
| <p>[EPA–R06–RCRA–2008–0456; SW–FRL–9191–7]</p>  | <p><b>I. Overview Information</b></p> <p>A. What action is EPA finalizing?</p> <p>B. Why is EPA approving this action?</p> <p>C. What are the limits of this exclusion?</p> <p>D. How will OxyChem manage the waste if it is delisted?</p> <p>E. When is the final delisting exclusion effective?</p> <p>F. How does this final rule affect States?</p>   | <p>After evaluating the petition, EPA proposed, on July 9, 2009, to exclude the wastewater treatment biosludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (<i>see</i> 73 FR 54760). EPA is finalizing the decision to grant OxyChem’s delisting petition to have its wastewater treatment biosludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.</p>  |
| <p><b>Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion</b></p>   | <p><b>II. Background</b></p> <p>A. What is a delisting petition?</p> <p>B. What regulations allow facilities to delist a waste?</p> <p>C. What information must the generator supply?</p>   | <p><i>B. Why is EPA approving this action?</i></p>  |
| <p><b>AGENCY:</b> Environmental Protection Agency.</p>  | <p><b>III. EPA’s Evaluation of the Waste Information and Data</b></p> <p>A. What waste did OxyChem petition EPA to delist?</p> <p>B. How much waste did OxyChem propose to delist?</p> <p>C. How did OxyChem sample and analyze the waste data in this petition?</p>  | <p>OxyChem’s petition requests a delisting from K019, K020, F025, F001, F003, and F005 wastes listed under 40 CFR 260.20 and 260.22. OxyChem does not believe that the petitioned wastes meet the criteria for which EPA listed it. OxyChem also believes no additional constituents or factors could cause the waste to be hazardous. EPA’s review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is</p> |
| <p><b>ACTION:</b> Final rule.</p>   | <p><b>IV. Public Comments Received on the Proposed Exclusion</b></p> <p>A. Who submitted comments on the proposed rule?</p>   |   |
| <p><b>SUMMARY:</b> Environmental Protection Agency (EPA) is granting a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) its wastewater treatment biosludge generated by its Ingleside, Texas facility from the lists of hazardous wastes. This final rule responds to the petition submitted by OxyChem to delist K019, K020, F025, F001, F003, and F005 waste resulting from the treatment of wastewaters from the manufacturing processes at its facility. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded that the petitioned waste is not hazardous waste. This exclusion applies to 7,500 cubic yards per year of the K019, K020, F025, F001, F003, and F005 waste. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.</p> | <p><b>V. Statutory and Executive Order Reviews</b></p>  |   |
| <p>After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded that the petitioned waste is not hazardous waste. This exclusion applies to 7,500 cubic yards per year of the K019, K020, F025, F001, F003, and F005 waste. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.</p>   |   |   |
| <p><b>DATES:</b> <i>Effective Date:</i> August 23, 2010.</p>  |   |   |
| <p><b>ADDRESSES:</b> The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th</p>   |   |   |